



September 17, 2007

Ms. Nancy M. Morris, Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

**Re: File No. S7-15-07**  
**Release No. 33-8819**  
**Proposed Rule: Smaller Reporting Company Regulatory Relief and Simplification**

Dear Ms. Morris:

This letter is the response of BDO Seidman, LLP to your request for comments regarding the above proposal.

We support extending the scaled disclosure and reporting requirements for smaller companies to a much larger group of companies. The revenues and public float thresholds reflected in Regulation S-B were adopted in 1992. Given the inflation, economic growth, and increases in stock prices that have occurred since that time, we believe that it is appropriate to raise those thresholds. We also support eliminating the smaller reporting company forms.

Our comments focus on the definition of a smaller reporting company, smaller reporting company forms and the location of the rules, improvements to these rules that could be made as the Commission reconsiders them, Canadian foreign private issuer matters, and transition matters.

### **Smaller Reporting Company Definition**

#### *Public Float Test*

We believe that \$75 million is the minimum level at which the public float ceiling should be set for purposes of defining a smaller reporting company. Setting the criterion at this level has the appeal of being consistent with the level in the definition of an accelerated filer. In addition, based on the statistics in the appendices to the *Final Report of the Advisory Committee on Smaller Public Companies to the U.S. Securities and Exchange Commission*, institutional holdings and analyst coverage of companies with public float below this level are insignificant.<sup>1</sup> However, the Final Report also indicates that institutional holdings and analyst coverage of

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<sup>1</sup> See the Final Report, Appendix E, Table 7, Analyst Coverage and Institutional Holdings, by Market Capitalization, December 2004. The statistics in the Final Report are based on market capitalization rather than public float. Taking this into account, we believe that our statement is appropriate.

companies with greater levels of public float are also limited. Accordingly, we think that the Commission would be justified in setting the public float criterion at a higher level if it chose to do so.

### *Other Size Measures*

We believe that public float may not always serve as a reliable indicator of the level of disclosure that is appropriate to meet investors' needs. For example:

- A company in the development stage may have a public float in excess of \$75 million but no revenue and few assets other than cash. Investors in such a company are probably most interested in information about the progress of its development and its prospects and would not find the incremental disclosures required of companies that are not smaller reporting companies to be of much value. We believe it would be appropriate for the Commission to excuse such a company from making those incremental disclosures.
- A company that would be considered "large" based on its revenues or assets might have a significant number of shares owned by non-affiliates but have relatively little public float if it is having financial difficulties. Investors in such a company might be interested in the incremental disclosures required of companies that are not smaller reporting companies.

We suggest that including a size criterion, such as annual revenue, in the definition would reduce the risk that an issuer would be required to provide disclosures at a level which is inconsistent with the needs of investors. For certain industries (e.g., financial services), total assets might be a more relevant criterion.

### *Inflation Adjustments*

We agree with the Commission's plan to adjust periodically the size criteria for inflation. We recommend that the Commission also adjust the public float criterion in the definition of an accelerated filer at the same time, so the definitions will be consistent.

### *Applying the Proposed Rules*

If a company has a public float that is greater than zero but not significant, it is not clear to us whether it should determine whether it is a smaller reporting company based on the public float test or the revenue test.

Proposed Item 10(f) of Regulation S-K states (emphasis added), "In the case of an issuer whose public float as calculated under paragraph (i) or (ii) of this definition was *zero* because the issuer had no *significant* public common equity outstanding or no market price for its common equity existed, [the issuer is a smaller reporting company if it] had annual revenues of less than \$50 million during the most recently completed fiscal year."<sup>2</sup> It seems to us that a company can only have zero public float if it has *zero* public common equity outstanding, and if it has an

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<sup>2</sup> See proposed Items 10(f)(1) and 10(f)(2).







